clusion that Section 273 (provisions as to sentences and fines) applies without modification.

The chief difficulty lies in the use of the words "recoverable as a fine" in Section 433. In Sections 180(2) and 438(3) similar words are used and undoubtedly on the construction of these particular sections the recovery is to be by levying distress in the first instance under Sections 273(1)(b)(ii), and the words 'recoverable as a fine' may be contrasted with the words 'enforced as a fine' under Section 432(2). It is also true that Hyndman-Jones, J.C. in the case above quoted at page 63 was of the opinion that 'enforce,' cannot be considered as synonymous with 'recoverable' and considered that 'enforced,' the word used in the sections which he was construing, applied aptly to a possible realisation of the sum by stress of imprisonment. The learned judge, however, was not called upon to decide expressly whether the word 'recoverable' did not have the same effect and his expression of opinion on the subject must therefore be considered as *obiter*.

Then there is the case of *Eusoff Hajee Ahmad* v. *Municipal Commissioners of Singapore*, 1931 S.S.L.R. page 81, to be considered. In that case compensation awarded under the Municipal Ordinance was 'recoverable' under Section 362(2) of that Ordinance 'in the same way as if it was a fine imposed by a Police Court.' The Full Court decided in effect that the objects of the Municipal Ordinance had to be considered, that these objects clearly contemplated the payment of a sum of money and not the imprisonment of the person who was bound to pay it. The Court concluded that under provisions of the Municipal Ordinance no liability to imprisonment arose. This case is of importance as it shows that the objects of the particular ordinance, namely the payment of compensation, may be taken into consideration in arriving at a conclusion as to the meaning of the words 'recoverable as a fine.'

Applying that principle to the present case, it might be argued that the object of Section 432 D is merely to give to an accused person a simple remedy by way of costs so as to save him the necessity and expense of taking civil proceedings for malicious prosecution. If that were the only object I can see much force in the argument that the costs awarded are in the nature of a civil debt and should not be enforced by imprisonment in the first instance. The fallacy of this argument, however, lies in the fact that a vexatious and unreasonable prosecution may result in penal as well as civil consequences under Sections 182 and 500 of the Penal Code, and there is no reason to suppose that the legislature in giving powers to the Supreme Court and District Court under Section 432D did not contemplate the penal just as much as the civil consequences of a malicious prosecution. It certainly would have been more satisfactory if the legislature used in Section 433 the expression "enforced as a fine" instead of "recoverable as a fine." It is, however, impossible, to say that the words "recoverable as a fine" have any fixed or definite meaning, and the section must be construed so as to give effect to the probable intention.

Applying therefore, the principle of the case of *Eusoff Hadji Ahmad* v. *Municipal Commissioners of Singapore*, I come to the conclusion that the words "recoverable as a fine" in Section 433 import all the methods specified in Section 273 of the Criminal Procedure Code including rigorous imprisonment. I think, therefore, that the order appealed from is right and would dismiss the appeal.

Appeal dismissed.

[APPELLATE CRIMINAL JURISDICTION.]

REX - - - - - - Respondent

vs.

MOHAMED ALI - - - - Appellant

[MAGISTRATE'S APPEAL No. 39 OF 1931.]

Ordinance 96 (Minor Offences)—Section 33 (c);—Permitting prostitutes to resort—Act of Servant—Liability of employer—Capacity in which prostitutes resorted.

The licensee of a Café is guilty of an offence if his servants in the course of his employment knowingly permits prostitutes to meet or remain in the licenced premises but it must be proved that the prostitutes were on the premises in the capacity of prostitutes.

The appellant was on the 20th day of July, 1931, convicted before a Police Magistrate at Singapore for that he being the keeper of a house of public resort. to wit, Madras Café North Bridge Road, Singapore, did knowingly permit prostitutes to meet or remain therein between 29th April, 1931 and 7th June, 1931, an offence punishable under Section 33(c) of Ordinance 96 (Minor Offences) and was ordered to pay a fine of $50.

The appellant's Manager had in May 1931, been warned by the police that prostitutes frequented his premises.

In his grounds of decision the Magistrate said:

"Two points have to be established by the Prosecution to prove their case under this section; firstly that the women are prostitutes, secondly that the accused knowingly permits them to meet or remain on his premises. (As I read the section it is immaterial whether on any particular occasion the prostitutes have come to pursue their trade, or otherwise, though the Defence appeared to regard this consideration as one of moment) I decided both points were satisfactorily established in this case. As regards the first the witnesses for the Prosecution stated definitely that several of the women they saw frequenting the Madras Café were to their personal knowledge prostitutes, statements I saw no reason to disbelieve. As regards the second on weighing the evidence I felt no doubt that the accused knew prostitutes were using his premises, and knowing it, permitted them to do so. My reasons for reaching this conclusion were, I thought it highly improbable that the accused's manager failed to acquaint him with the reason of his being summoned to the Detective Station by Mr. Tongue, or that the accused was ignorant of the class of clientele which patronised his Café at night.

The Petition of Appeal contained the following grounds:—

That the Magistrate was wrong in holding that the Appellant had actual knowledge of the alleged offence and/or permitted it to be committed.

That the evidence called by the prosecution was consistent with prostitutes having used the Appellant's premises for the purpose of obtaining reasonable refreshment.

That there was no evidence that prostitutes had used the Appellant's premises for the purpose of pursuing their calling.

The appeal was heard before Terrell, J. on the 26th September, 1931.

Smith for the Appellant. Appellant was not on the premises at the material times.

If prostitutes were on the premises they were there for the purpose of getting refreshments and not for the purpose of prostitution. *Greu* v. *Bendenno*, 27 L.J.M.C.; 1 E.B. & E. 133. 120 E.R. 458; *Belesco* v. *Hannant*, 6 L.T.R. 577; 9 Cox C.C. 203.

McElwaine, D.P.P. for Crown. Appellant is liable for the act of his servants. *Allen* v. *Whitehead*, (1930), 1 K.B. 211.

There was evidence that the prostitutes were on the premises for the purposes of their profession and not solely as guests.

Cur. Ad. Vult.

1-10-1931.

TERRELL, J.—The accused is the licensee of the Madras Cafe and was charged under Section 33(c) of Ordinance No. 96 (Minor Offences) with having knowingly permitted prostitutes to meet and remain at the Cafe between 29th April and 7th June, 1931.

I should mention to begin with that I consider that the dates on which the alleged offence was committed are far too vague and that one or two specific dates should have been mentioned so as to enable the accused person to know the charge which he was called upon to meet. Mohamed Ali, although the licensee of the premises, was not the manager and it was urged in defence that Mohamed Ali himself had no knowledge of the alleged offence. There can be no doubt that on the authority of *Allen* v. *Whitehead*, (1930), 1 K.B. p. 211 that this defence fails as in matters of this kind the knowledge of the manager is imputed to the licensee, and there can be no doubt that if an offence was committed the manager had full knowledge of it. This defence was not pressed on the appeal.

In a case of this kind the prosecution has to prove not merely that prostitutes frequented the premises but that they met and remained there in the capacity of prostitutes. While it is necessary on the one hand for the prosecution to prove that the women assembled in furtherance of prostitution on the other hand it is not an offence if women, who happened to be prostitutes, entered the Café for purposes of refreshment (see *Belesco* v. *Hannant*, 6 L.T.R. p. 577).

The accused therefore cannot be convicted unless it was proved that the women met and remained in the Café in their capacity as prostitutes and this point was stressed by the defence at the trial before the learned Magistrate. The learned Magistrate however appears to have considered that it was sufficient if it were proved that women known to be prostitutes met and remained on the premises whether they did so in their capacity as prostitutes or not. It may well be that if the learned Magistrate had taken the correct view of the law he might still have come to the conclusion that the evidence warranted a conviction, but as in all criminal cases the offence must be proved beyond reasonable doubt and as the learned Magistrate clearly viewed the evidence from the wrong angle, I think that the conviction cannot stand and must be set aside and that the fine must be remitted.

Appeal allowed.

Conviction quashed.

Solicitors for the Appellants:—

Donaldson & Burkinshaw.